

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

8 DANIEL EVERETT,

No. C 13-3693 CW

9 Plaintiff,

10 v.

11 VICTOR MAKRAS,

12 Defendant.

ORDER DENYING  
APPLICATION TO  
PROCEED IN FORMA  
PAUPERIS AND  
DISMISSING  
COMPLAINT (Docket  
No. 3)

13 /  
14 Plaintiff Daniel Everett seeks leave to proceed in forma  
15 pauperis (IFP) in this action for injunctive relief against  
16 Defendant Victor Makras. The Court denies this request under 28  
17 U.S.C. § 1915(e)(2)(B) because Plaintiff's complaint is frivolous.

18 LEGAL STANDARD

19 A court may grant a plaintiff leave to proceed IFP under 28  
20 U.S.C. § 1915(a) only when the plaintiff has presented a claim  
21 that is not factually or legally frivolous within the definition  
22 of § 1915(e)(2)(B).<sup>1</sup> O'Loughlin v. Doe, 920 F.2d 614, 616 (9th

23  
24 \_\_\_\_\_  
25 <sup>1</sup> Section 1915(e)(2)(B) states:  
26 . . . the court shall dismiss the case at any time if the court  
determines that--

27 (B) the action or appeal--

28 (i) is frivolous or malicious;  
(ii) fails to state a claim on which relief may be granted; or

1 Cir. 1990); Tripati v. First Nat'l Bank & Trust, 821 F.2d 1368,  
2 1370 (9th Cir. 1987). An IFP complaint is frivolous if it is  
3 "without merit" and has "no arguable basis in fact or law."  
4 O'Loughlin, 920 F.2d at 617 (quotation marks and citations  
5 omitted).

6 Section 1915(e)(2)(B) accords judges the unusual power to  
7 pierce the veil of the complaint's factual allegations and dismiss  
8 those claims where the factual contentions are clearly baseless.  
9 Denton v. Hernandez, 504 U.S. 25, 34 (1992). Because a dismissal  
10 pursuant to § 1915(e)(2)(B) is not a dismissal on the merits, but  
11 rather an exercise of the court's discretion under the IFP  
12 statute, the dismissal does not prejudice the filing of a paid  
13 complaint making the same allegations. Id.

14 DISCUSSION

15 Plaintiff's complaint alleges that Makras, the manager of the  
16 apartment building where Plaintiff lives, has failed to make  
17 necessary repairs to Plaintiff's water heater. Plaintiff thus  
18 seeks a temporary restraining order and preliminary injunction  
19 compelling Makras to repair the water heater.<sup>2</sup> Plaintiff asserts  
20 that diversity of citizenship exists under 28 U.S.C. § 1332  
21 because he and Makras "are citizens of two different states and  
22 the amount in controversy exceeds \$75,000." Docket No. 1, Compl.  
23 ¶ 3. This allegation is without merit.

24 "In actions seeking declaratory or injunctive relief, it is  
25 well established that the amount in controversy is measured by the

---

26 (iii) seeks monetary relief against a defendant who is immune  
27 from such relief.

28 <sup>2</sup> Although Plaintiff requests a temporary restraining order in his  
complaint, he has not filed a separate motion seeking such relief.

1 value of the object of the litigation.'" Chapman v. Deutsche Bank  
2 Nat. Trust Co., 651 F.3d 1039, 1045 n.2 (9th Cir. 2011) (citations  
3 omitted). Applying this rule in the present case, the true amount  
4 in controversy here is the cost of repairing or replacing  
5 Plaintiff's allegedly broken water heater: this figure cannot  
6 plausibly exceed the jurisdictional minimum of \$75,000.  
7 Furthermore, Plaintiff's statements in this and other recent cases  
8 indicate that he and Makras are both California citizens.  
9 Accordingly, Plaintiff's conclusory allegation that federal  
10 subject matter jurisdiction exists is baseless and his request to  
11 proceed IFP must be denied.

12 The Court notes that Plaintiff, a licensed California  
13 attorney, has a history of frivolously invoking diversity of  
14 citizenship as a basis for federal subject matter jurisdiction in  
15 disputes with his landlord. He has attempted to do so at least  
16 three times in the past six months and, as a result, is currently  
17 subject to a pre-filing review order in this district. See  
18 Boschetti v. O'Blenis, Case No. 13-2706, Docket No. 23. Although  
19 he filed his complaint in the present case before that pre-filing  
20 order issued, his past conduct nevertheless further counsels  
21 against granting him leave to proceed IFP in this case.

22 CONCLUSION

23 For the reasons set forth above, Plaintiff's request for  
24 leave to proceed IFP (Docket No. 3) is DENIED. Plaintiff's  
25 complaint is DISMISSED without prejudice to refiling a paid  
26 complaint within thirty days of this order. The Clerk shall close  
27 the file.

1 If Plaintiff seeks leave to proceed IFP on another frivolous  
2 complaint in this district, the Court will notify the State Bar.

3 IT IS SO ORDERED.

4  
5 Dated: 8/14/2013

  
6 CLAUDIA WILKEN  
7 United States District Judge  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28